

Monday, 6 May, 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0935.

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Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before
with the addition of: MR. GOVINDA MENON, Associate
Counsel, acting on behalf of India.

For the Defense Section, same as before with
the addition of: MIYAKE, Shotaro, Counsel for Accused
UMEZU, Yoshijiro; OKAMOTO, Shuichi, Counsel for Accused
MUTO, Akira; SAMMONJI, Shohei, Counsel for Accused
KOISO, Kuniaki; SHIOHARA, Tokisaburo, Counsel for
Accused KIMURA, Heitaro; YAMADA, Hanzo, Counsel for
Accused ITAGAKI, Seishiro; and KIYOSE, Ichiro, Counsel
for Accused TOJO, Hideki and SATO, Kenryo.

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(English to Japanese interpretation
was made by MORI, Tomio of the President's

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1 statements, and by SHIMANOCHI, Toshiro of
2 statements from the floor, Lanny Miyamoto
3 acting as Monitor.)

4 MARSHAL OF THE COURT: The International
5 Military Tribunal for the Far East is in session and
6 is ready to hear any matter brought before it.

7 THE PRESIDENT: This morning, there was
8 placed on the table of each of the Members of this
9 Tribunal a pamphlet described as "Japan's Record and
10 World Security." None of us has had time to peruse
11 this pamphlet closely, but it would appear to be anti-
12 Japanese propaganda. It was most improper for that
13 document to be placed on the tables of the Members of
14 this Court. I am not aware of the responsibility of
15 any particular person for it. I have not investigated
16 it, but the Members of the Court will not be, in the
17 slightest, influenced by anything in that pamphlet.

18 Are there any additional appearances of
19 counsel?

20 DR. KIYOSE: There is nothing on our part.

21 Mr. President, at our last session I intro-
22 duced twenty-three members of the Japanese defense
23 counsel. Since then, six more members have been add-
24 ed. May I, at this time, present these six new
25 members?

1 THE PRESIDENT: You may.

2 DR. KIIYOSE: Mr. YAMADA, Sanzo, on behalf of
3 defendant ITAGAKI; counsel SHIOBARA for defendant
4 KIMURA; counsel OKAMOTO for defendant MUTO, Akira;
5 KIIYOSE, Ichiro, will be counsel for SAKO, Kenryo;
6 counsel MIYAKE for defendant UMEZU. That is all.

7 THE PRESIDENT: Then all of the defendants
8 are now represented by Japanese counsel, is that so?

9 MR. KOBAYASHI: Mr. President, I am Shunzo
10 KOBAYASHI, defense counsel for Yosuke MATSUOKA. The
11 defendant MATSUOKA has been suffering from a rather
12 serious ailment for the past six years. In connection
13 with his illness, a petition has been submitted to
14 this Court today to examine him. As a result of the
15 fact that defendant MATSUOKA attended this Court two
16 times, his condition has suddenly become worse. As
17 defense counsel, when I saw the defendant in an inter-
18 view, I found that his condition was so bad that it
19 was considered difficult for him to attend the session
20 today. In this connection, a document has been pre-
21 sented to the Court today.

22 It is requested by this counsel that
23 MATSUOKA be permitted to rest in another room in this
24 Court during the present session and that he appear
25 only on the occasion when he is asked to make his plea.

1 However, during the Defendant's absence, this counsel
2 will remain in this Court to follow the proceedings.

3 THE PRESIDENT: There is no danger of an
4 immediate collapse, is there?

5 MR. KOBAYASHI: I believe that there is
6 such an anxiety.

7 THE PRESIDENT: Well, subject to the concur-
8 rence of the Members of the Tribunal, I think that
9 this matter should be adjourned to Chambers to be
10 dealt with by me as President, as I dealt with the
11 other case.

12 MR. KOBAYASHI: At this opportunity, I
13 should like to present to the Court what has been
14 referred to me by counsel Warren.

15 MAJOR WARREN: Does the Court understand?
16 If the Court please, Mr. MATSUOKA has selected me, and
17 my name is on file with the concurrence of his son and
18 his counsel to act as American defense counsel, with
19 the permission of this Tribunal.

20 THE PRESIDENT: Well, the application is
21 adjourned to Chambers and will be dealt with by me
22 during the recess.

23 Have the parties -- defense and prosecution --
24 agreed on the corrections, if any, to the Japanese
25 translation?

1 MR. KEENAN: I wish to state, Mr. President,
2 there have been no specific errors submitted to me to
3 pass on to the translation section. As soon as they
4 are, they will be given prompt attention. We have not
5 received any specific notice of any specific errors as
6 alleged.

7 CAPTAIN COLEMAN: If the Court please, the
8 Indictment is now being translated under the direction
9 of the Central Liaison Office, and their translation
10 has not yet been completed.

11 MR. KEENAN: Of the Japanese Government?

12 CAPTAIN COLEMAN: Of the Japanese Government.

13 THE PRESIDENT: Well, I see no reason why we
14 should not proceed to take the pleas of the various
15 defendants.

16 CAPTAIN COLEMAN: If the Court please, the
17 defense does not feel that the taking of the pleas
18 should be held up pending the correction of any in-
19 accuracies in the translation of the Indictment.

20 THE PRESIDENT: The inaccuracies are likely
21 to be very few and, in most cases, not substantial, I
22 take it.

23 MR. TAKAYANAGI: (Counsel for accused
24 SHIGEMITSU, Mamoru) Mr. President, there being some --
25 several substantial differences between the English

1 and Japanese texts in the Indictment, and the Indict-
2 ment being a highly important document upon which the
3 defense must rest its arguments in conducting this
4 trial, it is believed that these mistakes should be
5 rectified beforehand.

6 MAJOR MOORE: If I understand the order of
7 the Court, sir, it was that the defense should submit
8 errors in the translation and not submit a new trans-
9 lation.

10 I call the attention of the Court to this,
11 sir, because the variations in the Japanese language
12 are of such nature that, if we have to compare one
13 translation with another translation, the difficulties
14 for the Court will mount. However, if the errata are
15 submitted, it is possible, in a brief time, to make the
16 necessary corrections in the text as submitted.

17 MR. KEENAN: If the Court please, I fail to
18 see the materiality of these objections at this time.
19 The Indictment is lodged in the English language in
20 accordance with the rules of this Court. The trans-
21 lation furnished was for the convenience of the de-
22 fendants. They have had this Indictment a considerable
23 period of time, and they have available their own
24 translations. I, therefore, ask the Court, respect-
25 fully, on the part of the Prosecution, to proceed with

1 the taking of these pleas because I feel that the
2 interests of justice will in no manner suffer thereby.

3 MAJOR WARREN: May I address the Tribunal,
4 sir, on that point? If the Tribunal please, the
5 prosecution section of this Court has been set up for
6 several months. The defense section is new. We have
7 no interpreters of our own that can take care of the
8 legal technical questions raised in the interpreta-
9 tion. Believe me, sir, we have been informed by
10 Japanese counsel and the defendants who read and
11 understand English that they are not typographical
12 errors, but are such that, in some instances, the
13 accused actually are unable to understand the legal
14 import of the document presented to them.

15 That document, sir, was compiled by, and
16 translated by, the prosecution without any considera-
17 tion for the defense because at that time there existed
18 no defense; and we ask the Tribunal's kind indulgence,
19 in accordance with the Charter of this Tribunal, in
20 permitting us to place before the accused their charges
21 in a language understandable to them, translated so
22 that the full legal import will be conveyed to the
23 accused.

24 THE PRESIDENT: The accused who can read
25 English know what is in the Indictment. There is no

1 doubt in their minds as to what it contains.

2 DR. KIYOSE: May I add a few words, Mr.
3 President? Mr. Keenan, the Chief Prosecutor, has said
4 that the Japanese translation was prepared for the
5 sake of convenience and that the text of the Indict-
6 ment was lodged in English. However, the Charter of
7 this Tribunal provides that the proceedings be con-
8 ducted both in Japanese and in English. In order to
9 conduct a fair trial, Japanese should not be regarded
10 merely as a convenient language but should be consider-
11 ed as official.

12 THE PRESIDENT: Well, the rules of the Court
13 require that a translation of the Indictment into
14 Japanese be served with the Indictment.

15 MR. KEENAN: Mr. President, the Charter of
16 this Tribunal clearly sets forth the jurisdiction and
17 the crimes encompassed within the purview of this
18 Court. The Indictment itself charges the planning,
19 the waging, and the initiating of aggressive warfare
20 and warfare in violation of treaties, agreements and
21 assurances. I have no knowledge of the Japanese
22 language, but these expressions are clearly compre-
23 hensible in the English language. If there are no
24 equivalents for them in the minds of these defendants
25 in the Japanese language, I suggest that it would be

1 entirely futile to wait a period of weeks or months.
2 I suggest that all of the requirements of fairness,
3 and all of the requirements of the Charter, have been
4 fully complied with with the lodging of this Indict-
5 ment and with the furnishing of a translation from the
6 best group of English-speaking Japanese that were
7 available in this territory. I therefore, again,
8 your Honor, request that these dilatory proceedings
9 cease and respectfully ask that the Court take the
10 pleas of these defendants.

11 THE PRESIDENT: They can always plead not
12 guilty to a charge--

13 INTERPRETER: May I translate, Mr. President?

14 THE PRESIDENT: Yes.

15 The important point is not whether there are
16 mistakes in the translation but whether the Japanese
17 accused know what charges are being made against them.
18 Now, if any accused is in doubt as to the meaning of
19 any charge, he will be advised by his counsel to plead
20 not guilty. That is the only advice he can get. But,
21 at some early stage, there must be delivered a correct
22 translation, if the existing translation contains
23 errors, because, no matter what his plea may be, he
24 must understand the charge so that he can meet it.

25 MAJOR WARREN: May I address the Tribunal,

1 briefly?

2 MR. KEENAN: Just a moment. If the Court
3 please -- (Addressing Major Warren) Will you pardon
4 me a moment? -- we have a procedure already set up to
5 take care of these matters. We have lodged an Indict-
6 ment in the English language, and we have had what we
7 believe to be a careful and accurately checked trans-
8 lation. If the accused do not understand either the
9 English or the Japanese translation, we have, as I
10 understand it, your Honor, referees appointed to pass
11 upon any questionable phrases in the translation.
12 Therefore, your Honor, having furnished what we say
13 is a correct translation of the English document, I
14 respectfully suggest, as orderly procedure, if defense
15 counsel or any of them have any obscurities in their
16 mind, that they specify what they are and bring them
17 to our attention, and they will receive prompt atten-
18 tion from our translation division; and, if they cannot
19 be reconciled, we shall immediately take the matter up
20 with the referees already appointed, as I understand,
21 by this Court for that precise purpose.

22 I again ask, Mr. President, that these
23 dilatory tactics cease and that the pleas be taken.

24 THE PRESIDENT: The accused could not know
25 there were mistakes in the translation unless they

1 knew what was in the Indictment.

2 MAJOR WARREN: May I address the Tribunal?
3 We would like to state to the Tribunal that the defense
4 will not raise any question that is dilatory, and
5 we do not like this matter to be referred to in that
6 manner. We merely wanted to ask the Court, before
7 the microphone was taken from me, if it would be
8 necessary at this time or any further stage of the
9 proceedings to save an exception to a ruling of the
10 Court if it should happen to be adverse. We wanted
11 to know that which will save time from now on.

12 THE PRESIDENT: You can always make a
13 conditional appearance or conditional plea, as I
14 understand the law.

15 MAJOR WARREN: For the time being, sir, that
16 will be satisfactory for my client. I cannot act for
17 the rest.

18 THE PRESIDENT: I propose to call on the
19 accused to plead at this stage.

20 DR. KIYOSE: Mr. President, before that, I
21 have a motion. Before making the plea, we would like
22 to challenge the Judge.

23 THE PRESIDENT: Yes. What is the challenge?

24 DR. KIYOSE: I wish to make the motion to
25 each of the Members of the Tribunal. By raising any

1 objection, it does not mean that I have any lack of
2 respect for this Court, but it is because of the
3 historical importance and historical purposes for
4 which this trial is being held that I speak.

5 THE PRESIDENT: I want you to tell me
6 whether you are challenging the individual Members
7 of the Court personally.

8 DR. KIYOSE: Yes, sir.

9 THE PRESIDENT: You must state shortly your
10 grounds of challenge in each case.

11 DR. KIYOSE: First, I wish to present the
12 challenge to Sir William Webb, President of the
13 Tribunal.

14 THE PRESIDENT: On what grounds?

15 DR. KIYOSE: First, that it is not proper,
16 from the standpoint of justice and fairness, that Sir
17 William Webb should conduct this trial.

18 Second, that it is improper for Sir William
19 Webb to conduct this trial in accordance with the Pots-
20 dam Declaration of July 26, 1945.

21 THE PRESIDENT: You must be more specific in
22 stating your grounds.

23 DR. KIYOSE: That I shall now present. Third
24 is the fact that Sir William Webb has investigated the
25 case of Japanese atrocities in New Guinea and has

1 submitted the results of said investigation to the
2 Australian Government. On the basis of these three
3 points I should like to make a few explanations.

4 THE PRESIDENT: Well, I will take no part
5 in the decision of the point based on my alleged in-
6 ability to sit because of the report on atrocities
7 in New Guinea and elsewhere. I think that point
8 should be decided now.

9 The Court will now recess and will re-
10 assemble when the decision is come to. I will take
11 no part in the decision.

12 MR. KEENAN: May I be heard for a moment
13 before the Court recesses? I would like to ask--

14 MARSHAL OF THE COURT: Pardon, Mr. Keenan.
15 There is a correction in the interpretation, if I may
16 interrupt you, sir.

17 (Whereupon, an English to Japanese
18 reinterpretation was made.)

19 MR. KEENAN: (Continuing) whether or not
20 the objections that are being registered have to do
21 with challenges for cause of individual Members of the
22 Court or whether they include any general objections
23 to the jurisdiction of this Court as it is composed.
24 If the latter, I think it should be in the form of a
25 written motion, in compliance with the rules of the

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1 Court.

2 THE PRESIDENT: In this case, I think we
3 should make a special order. We are not bound by our
4 rules of Court in every detail.

5 MR. KEENAN: Mr. President, I feel I may
6 have been misunderstood. I have no objection to
7 waiving the rules as they exist with reference to the
8 Court or any Member passing upon a challenge for
9 cause. But, I am proceeding to the second point --
10 as I suspected, although I did not get it clearly --
11 as to whether or not there is to be a general objec-
12 tion to the jurisdiction of this Court running to
13 matters of law. If that is true, I would suggest
14 that that be in the form of a written motion duly
15 served upon counsel for the prosecution, which has
16 not taken place.

17 THE PRESIDENT: There is such a general
18 objection; I was told so in answer to my inquiry.
19 But, there is a special objection to me.

20 MARSHAL OF THE COURT: May I ask the
21 spectators to remain quiet!

22 DR. KIYOSE: Mr. President, the objection,
23 unlike motions, requests, applications, et cetera,
24 mentioned in the Charter, is not something to be sub-
25 mitted in writing, but is something which occurs

1 spontaneously. The President has now called for a
2 recess of this session. However, after the recess, it
3 is my desire that his Excellency, the President of the
4 Court, calmly listen to the objections which I will
5 have to raise.

6 In regard to the question of the investiga-
7 tion of the atrocities in New Guinea, I must say that
8 matters of that kind will influence the decisions
9 taken here.

10 LANGUAGE SECTION CHIEF: Go on with the
11 translation, please.

12 DR. KIYOSE: The report of Sir William Webb
13 regarding the Japanese atrocities in New Guinea is not
14 without connection with this trial. They have a re-
15 lationship. However, if any references to such inci-
16 dents in New Guinea are withdrawn from the Indictment,
17 then I shall withdraw the objection on that point.

18 THE PRESIDENT: I can make no conditions.
19 I think the Court had better go into recess. My col-
20 leagues may find it necessary to hear argument on this
21 point, and, in that event, they will reassemble here
22 without me. In other words, the Court will be re-
23 constituted.

24 MR. KEENAN: May I address the Court for a
25 moment?

1 DR. KIYOSE: There being a slight error in
2 the translation of my previous statement, I wish to
3 make a slight correction. I wish to make this correc-
4 tion: According to Article 10 of the Charter, motions,
5 requests and applications are required to be submitted
6 in writing. But, objections, as it were, are matters
7 which occur spontaneously; and, in that sense, I
8 should like the Court to interpret the objections I
9 have raised. That is the correction.

10 MR. KEENAN: May I ask the Court if it will
11 indulge the prosecution in hearing for a few moments
12 from my associate prosecutor, Justice Mansfield, on
13 the subject brought before this Court before it
14 recesses?

15 THE PRESIDENT: Perhaps it would be advis-
16 able for the Court to be reconstituted. The Court
17 will recess.

18 (Whereupon, at 1025, a recess
19 was taken until 1040, after which the pro-
20 ceedings were resumed as follows:)
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MEMBER FROM THE DOMINION OF NEW ZEALAND:

During the recess the Members of the Tribunal, in the absence of the President, Sir William Webb, conferred upon this objection.

The Members have asked me, who presided at their conference, to make the announcement of their decision.

The Members of the Tribunal are of opinion that no objection to the person of any member of the Tribunal can be sustained. Article 2 of the Charter prescribes that the Tribunal shall consist of members appointed by the Supreme Commander. That being so, it does not rest with the Tribunal to unseat any one appointed by the Supreme Commander.

MR. KEENAN: Mr. President, I now ask the Court to have the prosecution take the pleas of the accused.

THE PRESIDENT: I should like to add that, before I accepted an appointment on this Tribunal, I seriously considered what effect my reports would have on my position as a Member of this Tribunal. I came to the conclusion without difficulty that I was eligible, my views being supported by the best legal opinion available to me in Australia.

I now call on the defendants.

1 DR. KIYOSE: Before taking pleas, a written
2 document has been submitted to the Court. I feel that
3 it is only proper that action be taken on this petition.
4 If accepted, it is felt that there will be no need for
5 half the defendants to make any pleas. Therefore, it
6 is felt that this petition is a premise to any further
7 action.

8 THE PRESIDENT: It is open to the accused to
9 plead conditionally, that is, without admitting the Court's
10 jurisdiction. That course will preserve all their rights.

11 DR. KIYOSE: In other words, Mr. President,
12 does that mean the plea may be made at a later date?

13 THE PRESIDENT: Yes.

14 DR. KIYOSE: With these reservations: we
15 should like to continue on the condition that any fu-
16 ture plea made by defendant will not be binding -- will
17 not be final. All future pleas of defendant will be
18 made with reservations.

19 THE PRESIDENT: He pleads once for all time,
20 but his plea will not prevent him from questioning the
21 jurisdiction later if so advised.

22 LANGUAGE SECTION CHIEF: Will the reporter
23 please read the last statement of defense counsel?

24 (Whereupon, the reporter read the
25 statement of Dr. KIYOSE, and it was narrated in

1 Japanese by the monitor).

2 DR. KIYOSE: In other words then, does that
3 mean that all the pleas must be made at the present mo-
4 ment?

5 THE PRESIDENT: They can make them conditional,
6 and I see no reason why they should not do so. Their po-
7 sition would not be prejudiced.

8 DR. KIYOSE: I understand. Then the defense
9 shall go on with the pleas with this special reserva-
10 tion: with the request that matters of jurisdiction be
11 duly considered.

12 THE PRESIDENT: I now call on the accused to
13 plead.

14 ARAKI, Sadao, how do you plead, guilty or not
15 guilty?

16 THE ACCUSED ARAKI: That question will be
17 replied to by the counsel.

18 THE PRESIDENT: Well, he should reply to it.

19 (Whereupon, the accused ARAKI continued
20 to speak in Japanese.)

21 THE PRESIDENT: We want a plea, not a speech.

22 THE ACCUSED ARAKI: I plead not guilty.

23 MAJOR WARREN: May we have a translation of
24 what the accused said before?

25 THE PRESIDENT: Not at this stage.

1 MR. KEENAN: I ask the Court to strike out
2 from the record everything that was said by the accused
3 other than the words "not guilty."

4 MAJOR WARREN: To which we object. Counsel
5 has not been informed what he said. If we do not know,
6 we cannot protect his rights.

7 THE PRESIDENT: Neither does the Tribunal.

8 MAJOR WARREN: That is right, sir.

9 THE PRESIDENT: DOHIHARA, Kenji, how do you
10 plead, guilty or not guilty?

11 THE ACCUSED DOHIHARA: Not guilty.

12 THE PRESIDENT: HASHIMOTO, Kingoro, how do you
13 plead, guilty or not guilty?

14 THE ACCUSED HASHIMOTO: Not guilty.

15 THE PRESIDENT: HATA, Shunroku, how do you
16 plead, guilty or not guilty?

17 THE ACCUSED HATA: I plead not guilty to all
18 counts.

19 THE PRESIDENT: HIRANUMA, Kiichiro, how do
20 you plead, guilty or not guilty?

21 THE ACCUSED HIRANUMA: I plead not guilty.

22 THE PRESIDENT: HIROTA, Koki, how do you plead,
23 guilty or not guilty?

24 THE ACCUSED HIROTA: Not guilty.

25 THE PRESIDENT: HOSHINO, Naoki, how do you

1 plead, guilty or not guilty?

2 THE ACCUSED HOSHINO: I plead not guilty.

3 THE PRESIDENT: ITAGAKI, Seishiro, how do you
4 plead, guilty or not guilty?

5 THE ACCUSED ITAGAKI: Not guilty.

6 THE PRESIDENT: KAYA, Okinori, how do you plead,
7 guilty or not guilty?

8 THE ACCUSED KAYA: I plead not guilty.

9 THE PRESIDENT: KIDO, Koichi, how do you plead,
10 guilty or not guilty?

11 THE ACCUSED KIDO: I plead not guilty.

12 THE PRESIDENT: KIMURA, Heitaro, how do you
13 plead, guilty or not guilty?

14 THE ACCUSED KIMURA: I plead not guilty.

15 THE PRESIDENT: KOISO, Kuniaki, how do you
16 plead, guilty or not guilty?

17 THE ACCUSED KOISO: I plead not guilty.

18 THE PRESIDENT: MATSUI, Iwane, how do you plead,
19 guilty or not guilty?

20 THE ACCUSED MATSUI: I plead not guilty.

21 THE PRESIDENT: MATSUOKA, Yosuke, how do you
22 plead, guilty or not guilty?

23 THE ACCUSED MATSUOKA: (In English) I plead
24 not guilty to all and every charge.

25 THE PRESIDENT: MINAMI, Jiro, how do you

1 plead, guilty or not guilty?

2 THE ACCUSED MINAMI: Not guilty.

3 THE PRESIDENT: MUTO, Akira, how do you plead,
4 guilty or not guilty?

5 THE ACCUSED MUTO: Not guilty.

6 THE PRESIDENT: NAGANO, Osami, how do you
7 plead, guilty or not guilty?

8 THE ACCUSED NAGANO: Not guilty.

9 THE PRESIDENT: OKA, Takasumi, how do you
10 plead, guilty or not guilty?

11 THE ACCUSED OKA: Not guilty.

12 THE PRESIDENT: OSHIMA, Hiroshi, how do you
13 plead, guilty or not guilty?

14 THE ACCUSED OSHIMA: Not guilty.

15 THE PRESIDENT: SATO, Kenryo, how do you plead,
16 guilty or not guilty?

17 THE ACCUSED SATO: Not guilty.

18 THE PRESIDENT: SHIGEMITSU, Mamoru, how do you
19 plead, guilty or not guilty?

20 THE ACCUSED SHIGEMITSU: I plead not guilty.

21 THE PRESIDENT: SHIMADA, Shigetaro, how do you
22 plead, guilty or not guilty?

23 THE ACCUSED SHIMADA: Not guilty.

24 THE PRESIDENT: SHIRATORI, Toshie, how do you
25 plead, guilty or not guilty?

1 THE ACCUSED SHIRATORI: I plead not guilty.

2 THE PRESIDENT: SUZUKI, Teiichi, how do you
3 plead, guilty or not guilty?

4 THE ACCUSED SUZUKI: Not guilty.

5 THE PRESIDENT: TOGO, Shigenori, how do you
6 plead, guilty or not guilty?

7 THE ACCUSED TOGO: I plead not guilty.

8 THE PRESIDENT: TOJO, Hideki, how do you plead,
9 guilty or not guilty?

10 THE ACCUSED TOJO: On all counts I plead not
11 guilty.

12 THE PRESIDENT: UMEZU, Yoshijiro, how do you
13 plead, guilty or not guilty?

14 THE ACCUSED UMEZU: Not guilty.

15 THE PRESIDENT: The plea of OKAWA, Shumei, will
16 be taken when he is able to appear in court.

17 MR. KEENAN: If the Court please, I now offer
18 in evidence the following documents which have already
19 been transmitted to the Secretariat for translation
20 into the Japanese language.

21 THE PRESIDENT: Mr. Chief of Counsel, are you
22 distinguishing between the United States' documents and
23 documents of other nations?

24 MR. KEENAN: I am not so distinguishing.

25 THE PRESIDENT: So they would be numbered

1 without regard to that distinction, one, two, three and
2 four?

3 MR. KEENAN: Yes. I shall name them, your Honor.

4 ASSISTANT CLERK OF THE COURT: Mr. Keenan, may
5 I ask, for the purpose of the record, do you intend to
6 introduce the seven as one exhibit?

7 MR. KEENAN: Yes. That will be "A," "B," "C,"
8 and "D."

9 THE PRESIDENT: We letter the documents only when
10 they are tendered for identification. There may be thou-
11 sands of documents, Mr. Chief of Counsel. I suggest that
12 they be numbered and that only those tendered for identi-
13 fication, if that be necessary, be lettered.

14 MR. KEENAN: In that event, we offer first,
15 as prosecution's Exhibit No. 1, the "Cairo Conference,
16 December 1, 1943";

17 Prosecution's Exhibit No. 2, the "Potsdam
18 Declaration, 26 July 1945";

19 Prosecution's Exhibit No. 3, styled "Japanese
20 Qualified Acceptance, August 10, 1945";

21 Prosecution's Exhibit No. 4, "Reply by Sec-
22 retary of State of the United States to Japanese Quali-
23 fied Acceptance, August 11, 1945";

24 Prosecution's Exhibit No. 5, "Final Japanese
25 Acceptance, August 14, 1945";

1 Prosecution Exhibit No. 6, "The Instrument of
2 Surrender, 2 September, 1945";

3 Prosecution's Exhibit No. 7, "Moscow Conference
4 Agreement, 26 December, 1945";

5 Prosecution's Exhibit No. 8, "Special Procla-
6 mation - Establishment of an International Military Tri-
7 bunal for the Far East";

8 Prosecution's Exhibit No. 9, "General Order
9 No. 20, General Headquarters, Supreme Commander for the
10 Allied Powers, Charter of the International Military
11 Tribunal for the Far East";

12 Prosecution's Exhibit No. 10, "General Order
13 No. 7, from General Headquarters, Supreme Commander for
14 the Allied Powers, 15 February, 1946, Appointment of
15 Members of the International Military Tribunal for the
16 Far East";

17 Prosecution's Exhibit No. 11, "Rules of
18 Procedure of the International Military Tribunal for
19 the Far East."

20 CAPTAIN COLEMAN: If the Tribunal please, the
21 defense at this time, for the purpose of the record and
22 subsequent proceedings, notes its formal objection to
23 the introduction of these documents.

24 THE PRESIDENT: I understood that one, at least,
25 was the basis of your challenge as to jurisdiction.

1 LANGUAGE SECTION CHIEF: Will the reporter
2 please read the last statement of the President.

3 (Whereupon, the reporter read the
4 last statement of the President.)

5 CAPTAIN COLEMAN: It appears the documents
6 offered for the record are tendered for the purpose of
7 establishing the jurisdiction of the Court.

8 It is the defendants' position that these
9 documents do not contain any provisions which could pre-
10 vide for the establishment of this Tribunal with its
11 jurisdiction as it is presently constituted.

12 THE PRESIDENT: It is anticipated that it will
13 be contended --

14 LANGUAGE SECTION CHIEF: Will the reporter
15 please read the last statement of the defense counsel?

16 (Whereupon, the reporter read the
17 last statement of Captain Coleman.)

18 THE PRESIDENT: It is anticipated that it will
19 be contended that General MacArthur's authority, as
20 Supreme Commander, is based on international law.

21 Chief of Counsel, are you ready to proceed
22 with your opening, or would you prefer the Court to recess?

23 MR. KEENAN: At this time, may I take occasion
24 to present to the Court Govinda Menon, Associate Prosecu-
25 tor from India.

1 I assume, if the Court please, it is the con-
2 tention of all parties, and entirely conformable to
3 reasonable procedures that, at this state of these pro-
4 ceedings, a date be fixed for the beginning of the taking
5 of evidence before this Court.

6 Necessarily, in the interest of orderly pro-
7 cedure, there must be some delay. In the interim, I
8 suggest to the Court that a date be fixed wherein any
9 matters pertaining to the jurisdiction of this Court, or
10 the fundamental soundness of these proceedings as a mat-
11 ter of law, might be presented formally with oral presenta-
12 tion and full opportunity to both prosecution and the ac-
13 cused to set forth their views. Therefore, if the Court
14 please, I ask, at this time, that an adjournment be taken
15 until a date be fixed by the Court for the formal presen-
16 tation of the evidence in support of the charges in the
17 Indictment against these accused; and I also ask, if it
18 be in order, that a date be fixed wherein the motion which
19 I have formally advised of -- it runs to the jurisdiction
20 of this Court and some basic challenges as to the lawful-
21 ness of this proceeding -- likewise be set down for some
22 convenient date for hearing in the interim.

23 THE PRESIDENT: We will consider that. I called
24 on you for your opening, as a matter of form, thinking it
25 would be followed by an application by the defense for a

1 time within which to prepare their defense.

2 LANGUAGE ARBITER (Major Moore): There will be
3 a moment's delay while we have the translation of the long
4 passage which was just rendered.

5 MR. KEENAN: May I say, for the purpose of the
6 record, that the instruments referred to, and these ex-
7 hibits, of course, are copies of the originals. Most of
8 them are public documents and well known. I do not be-
9 lieve that it would be required to present the originals,
10 in any event, but I want the record to show we are asking
11 the Court to permit us, at this time, to introduce these
12 exhibits in the form of copies of such instruments.

13 THE PRESIDENT: We take judicial notice of originals.

14 LANGUAGE ARBITER (Major Moore): Mr. President,
15 there has been a formal request, sir, from the Language
16 Section Chief that we take a few moments for translation.
17 We have had four remarks, none of which have been put into
18 Japanese for the benefit of the defendants.

19 THE PRESIDENT: Well, I do not see why you
20 should not put into Japanese, for the benefit of the de-
21 fendants, a summary of those remarks. If we are going to
22 wait until every word we say is interpreted, this trial
23 will go on for years. There will be a lot of argument.
24 Has every counsel and every Member of the Court to stop
25 at the end of every sentence in the course of a debate

1 while the translation proceeds?

2 LANGUAGE SECTION CHIEF: Mr. President, if I
3 may, I quote Section III, Article 9, Paragraph b of the
4 Charter:

5 "Language. The trial and related proceedings
6 shall be conducted in English and in the language of the
7 accused ----"

8 THE PRESIDENT: That does not prevent a sum-
9 mary.

10 LANGUAGE SECTION CHIEF: That shall be our
11 practice in the future, sir.

12 THE PRESIDENT: Unless the counsel for the de-
13 fense object, I suggest that that which we have been dis-
14 cussing be summarized. That will be sufficient.

15 MAJOR WARREN: If the Court please, we know,
16 at a later time, that better facilities will be provided
17 where there will be a simultaneous interpretation; but,
18 in order that the record be kept straight -- we know some
19 of these accused do not understand English -- we feel, if
20 you will bear with us in this proceeding, that, when we
21 again convene, the mechanical facilities will be suffi-
22 cient, and this will be overcome.

23 MR. KEENAN: The prosecution joins in that re-
24 quest and feels that, since during all this time there
25 have been translations currently given, there will occur

1 but little delay in having these translations completed
2 at the end of this proceeding; and we agree that, when
3 the formal taking of testimony begins, we will have
4 facilities that will permit quicker current translations.

5 THE PRESIDENT: We will let the court re-
6 porters repeat what has not yet been translated into
7 Japanese.

8 Does anybody else want the floor?

9 (No response.)

10 We recess now for fifteen minutes -- the
11 ordinary morning recess.

12 (Whereupon, at 1120, a recess was
13 taken, during which time the court reporter
14 read the proceedings requiring interpretation.
15 Then, at 1135, the proceedings were resumed as
16 follows, with Mr. Hidekazu Hayashi acting as
17 monitor:)

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1 LANGUAGE SECTION CHIEF: Will you begin the
2 translation, please?

3 (Whereupon, the official interpreter
4 interpreted into Japanese the proceedings
5 above referred to.)

6 LANGUAGE SECTION CHIEF: Mr. President, the
7 interpretations are complete.

8 DR. KIYOSE: I wish to present the desire
9 of the defense counsel regarding some time for the
10 presentation of evidence.

11 The defense counsel desire that the proceed-
12 ings be conducted speedily but with full justice. How-
13 ever, the setting of the arraignment was exceedingly
14 early. For instance, defendants ITAGAKI and KIMURA
15 arrived in Tokyo only the day before yesterday and were
16 able to see their attorneys on that day for only three
17 minutes. It is desired by the defense that two months
18 be permitted for examination of evidence.

19 It is also desired, to consider the question
20 of the Court's jurisdiction which was brought up today,
21 that another session be resumed after three weeks.
22 There is a slight addition to make to the translation.
23 The questions do not relate only to that of jurisdiction
24 but to other matters of formality and procedure, as
25 well, which include such matters as special motions.

1 THE PRESIDENT: Mr. Chief of Counsel.

2 MR. KEENAN: If the Court please, the prose-
3 cution is ready to proceed with the presentation of
4 formal evidence by the 21st of May. In this respect,
5 we point out to the Court the severe and tremendous
6 burden imposed upon the prosecution in preparing docu-
7 ments, bringing in witnesses, preparing the translations
8 of documents into the Japanese language, covering a
9 period of time encompassed in the Indictment of approx-
10 imately fifteen years and covering an area of territory
11 of several thousands of miles.

12 It is further suggested that one date be
13 fixed, in the interim, not earlier than a week, perhaps,
14 or not more than ten days, for the presentation of all
15 motions of a formal nature, any motions addressed to
16 the sufficiency of the Charter or the Indictment, or
17 any motions to strike, or other types; that the issues,
18 while contained in a lengthy Indictment, are of a very
19 simple nature. They have to do with matters of fact,
20 with military movements, military preparations, in-
21 vasions, acts of war, violation of the rules of war
22 with relation to the treatment of prisoners of war, and
23 crimes against humanity. Matters pertaining to law are
24 those to which, I am sure, both prosecution and defense
25 counsel have given much consideration; and, while they

1 are of profound importance, they are, in reality, not
2 involved matters. Therefore, we see no reason why
3 these motions could not be disposed of within a period
4 of ten days time.

5 CAPTAIN COLEMAN: If the Court please, as
6 the prosecution has pointed out, the matter covers a
7 lengthy period of time, the counts are numerous, the
8 complexity of facts makes it very involved and very
9 difficult to align both the materialness for the
10 motions and the presentation of the evidence. It is
11 submitted that the time requested is not excessive.

12 THE PRESIDENT: The Court has decided to
13 commence taking evidence on the third of June, but we
14 will not adjourn to that date because we have this
15 motion bearing on jurisdiction. We had hoped that this
16 motion on jurisdiction would be heard this week.

17 MR. KEENAN: Prosecution is prepared to
18 discuss it before the end of this week.

19 CAPTAIN COLEMAN: If the Court please, numer-
20 ous defendants, as well as their personal Japanese
21 attorneys, have requested the assistance of American
22 counsel and that American counsel be assigned to them
23 individually. I am informed that these counsel cannot
24 arrive here in less than one week. The Japanese coun-
25 sel will rely to a very great extent on the assistance

1 to be rendered them by their American associates, and
2 it is requested the time begin after the arrival of the
3 American counsel.

4 MR. KEENAN: If your Honor please, may I
5 suggest that the record show, from information given
6 by Captain Coleman, head of the defense counsel section,
7 how many Allied or American counsel have been here
8 available and for how long for consultation with the
9 Japanese counsel for the accused in this case? I am
10 informed that there is rather a considerable number
11 here already.

12 MAJOR WARREN: If the Tribunal please, we
13 should like the opportunity of answering that question.
14 Only yesterday afternoon were any American counsel
15 selected by the Japanese defendants with the concurrence
16 of their counsel. It would have been of little benefit
17 had many of us been here. Two arrived yesterday. All
18 told, there are six -- correction: there are eight. If
19 the Tribunal please, we did not know, and had no manner
20 of knowing, the charges to be brought against the ac-
21 cused. We could not be prepared. None of us had been
22 here for longer than two weeks, except one whose entire
23 time has been taken up in administrative matters. The
24 Prosecution has had many months preparation with an
25 adequate staff. We do not even have desks yet for our

1 counsel when they get here. Our task will be tremend-
2 ous. We will not be able to adequately defend the
3 accused in the manner that Anglo-American lawyers wish
4 to defend their clients, unless we are given adequate
5 time. We submit respectfully, sir, that the time
6 allotted is entirely insufficient, but we will abide
7 by whatever the Tribunal says and do our best under any
8 circumstances.

9 THE PRESIDENT: The defense will not commence
10 to give evidence on the third of June. They may not be
11 giving evidence before the third of July. They have
12 ample time, as far as we can judge.

13 MAJOR WARREN: Quite true, sir. But, we sub-
14 mit to the Tribunal that additional time in which to
15 present special pleas and motions and to attack the
16 jurisdiction of the Court would not delay the taking
17 of evidence, and we need the additional time very much.

18 THE PRESIDENT: Well, the question of juris-
19 diction should be capably handled by the Tekyo Bar with
20 such help as they get from American counsel now here.
21 On procedure, however, they may need far more assist-
22 ance from American counsel.

23 We think an early date should be fixed for
24 disposing of this motion on jurisdiction. We will
25 hear that motion on Monday, May 13. We will adjourn

1 until that date.

2 MAJOR WARREN: Sir, one question I did not
3 get clear. Will we be required to take exceptions to
4 the ruling of the Court, or will that be done auto-
5 matically for us when objection is made?

6 THE PRESIDENT: It will be automatically done
7 by the Court.

8 MAJOR WARREN: We thank you, sir.

9 THE PRESIDENT: The hope has been expressed
10 that one counsel be selected to argue the question of
11 jurisdiction, but we cannot control that. It may be
12 arranged that one American and one Japanese counsel
13 should argue the question of jurisdiction. That is a
14 pious hope we have, but we have no power to make any
15 direction in that regard.

16 The Court will now adjourn until nine-thirty
17 on Monday, the thirteenth of May.

18 (Whereupon, at 1200, an adjourn-
19 ment was taken until Monday, 13 May, 1946
20 at 0930.)

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